

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 190

No. 1260.

189

No SPECIAL CALENDAR.

CORBIN THOMPSON, PLAINTIFF IN ERROR,

v.s.

THE DISTRICT OF COLUMBIA,

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA,

FILED NOVEMBER 22, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

January
~~OCTOBER~~ TERM, 190*3*

No. 1260.

No. *7*, SPECIAL CALENDAR.

CORBIN THOMPSON, PLAINTIFF IN ERROR,

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In the Court of Appeals of the District of Columbia

CORBIN THOMPSON, Plaintiff in Error, }
vs. } No. 1260.
THE DISTRICT OF COLUMBIA.

a No. 217,397.

In the Police Court of the District of Columbia, November Term,
1902.

DISTRICT OF COLUMBIA }
vs. } Information for Violation of Weights and
CORBIN THOMPSON. } Measures Law.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Police Court of the District of Columbia, February Term, A. D. 1902.

THE DISTRICT OF COLUMBIA, ss:.

Andrew B. Duvall, Esq., attorney for the District of Columbia, by James L. Pugh, Jr., Esq., special assistant attorney for the District of Columbia, who, for the said District, prosecutes in this behalf in his proper person, comes here into court, and causes the court to be informed and complains that Corbin Thompson late of the District of Columbia aforesaid, on the 3rd day of February, in the year of our Lord nineteen hundred and two, in the District of Columbia aforesaid, and in the city of Washington, on B street, southwest, did then and there neglect and refuse to exhibit to one George A. Howe, the assistant sealer of weights and measures of said District, a certain measure, to wit: a glass bottle which said glass bottle was used and intended to be used by the said Corbin Thompson as a measure for the purpose of measuring milk to be sold in said District, contrary to and in violation of an act of Congress approved March 2, 1895 and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
Attorney for the District of Columbia,

By JAMES L. PUGH, JR.,

Special Assistant Attorney for the District of Columbia.

Personally appeared Geo. A. Howe this 12th day of February, A. D. 1902, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

N. C. HARPER,
Deputy Clerk of the Police Court for the District of Columbia.

In the Police Court of the District of Columbia.

THE DISTRICT OF COLUMBIA	}	No. 217,397.
vs.		
CORBIN THOMPSON.		

At the trial of this cause on the fourth day of November A. D. 1902, before the Honorable Charles S. Bundy, acting judge of the police court of the District of Columbia and a jury, the prosecutor, to maintain the issues on its part joined, offered and gave evidence tending to show that on the third day of February A. D. 1902, the assistant sealer of weights and measures of the District of Columbia called upon the defendant at his place of business in the city of Washington and requested the defendant to present to him, the said assistant sealer of weights and measures, all of the vessels used by him, the defendant, in his business as a dealer in milk and cream in measuring the said milk and cream; that the defendant offered to present to the said assistant sealer of weights and measures all of such vessels of other material than glass but refused to present such of his said vessels as were of glass, and referred the said assistant sealer of weights and measures to his, the defendant's attorney; and that the said vessels of glass which the defendant so refused to present were the vessels of glass used by the defendant for measuring the milk and cream furnished by him, consisting of quart, pint and half-pint bottles, and there the prosecutor rested.

And thereupon the defendant, to maintain the issues on his part joined, offered and gave evidence tending to show that on the
 3 said third day of February A. D. 1902, he was and now is engaged in the business of dealing in milk and cream in the District of Columbia; that the milk and cream delivered by him to his customers is delivered in glass bottles or jars, commonly known as quart bottles, pint bottles and half-pint bottles; that the said bottles are bought by him in large quantities at a time and are generally manufactured in moulds; that the said bottles are respectively of uniform size on the outside, but because of various incidents to their manufacture are of irregular size on the inside, and that it is impossible to make all such bottles of a given supposed size uniform in capacity; that in filling the said bottles for distribution the quantity to be contained in each is, in no instance, measured and that the process of filling them is to pour a given quantity of milk or cream, say, forty gallons, into a receptacle furnished with a cock or valve, to place under the said cock or valve each bottle as it is to be filled, and to remove it when filled, and that when all of

such bottles into which the said quantity of milk or cream is poured are filled, as a general rule, they indicate by their number not to exceed thirty-eight or thirty-eight and one-half gallons, as against the forty gallons poured into the receptacle aforesaid, and that, as a rule, the said bottles when filled and delivered indicate the holding by them of about ninety-five quarts out of every hundred so as aforesaid poured into and drawn from the said receptacle; that the said bottles are not used to measure the milk or cream sold and delivered by him but do so only approximately, the said method of filling the same as aforesaid and distributing them now being practically universal and having been established in the District of Columbia some eight or ten years ago in the interest of economy of time and labor, increased cleanliness, a more

4 even distribution of the butter fats contained in milk and cream, and greater convenience to the defendant's customers: in that, whereas before the adoption of the said method the defendant's drivers were required to carry and did carry milk and cream in wagons containing large cans from which the milk and cream were delivered from door to door into receptacles furnished by the customers, the desired quantity being measured in each instance and taken from the said wagons and poured from the drivers' measures to the receptacles of the customers, involving the time and labor necessary for the several steps in the process and frequently a delay of a greater or less extent occasioned by the thoughtlessness of servants who were not always ready for the drivers' calls, under the method aforesaid the bottles are filled and sealed at the defendant's dairy, taken by his drivers to the residences of his customers and deposited in designated places without regard to waiting upon servants or any other of the inconveniences of the old method; that the ordinary life of one of the said bottles is eight times filling, and the loss of such bottles from breakage, theft and other causes is very great, so that the defendant uses up in his business about eighty thousand such bottles each year; that under the order or regulation of the Commissioners of the District of Columbia, under which this cause was instituted, and in the administration thereof, the sealer of weights and measures of the District of Columbia claims and has the right at any and all times to call upon the defendant for an inspection of his said bottles and claims and has the right to stamp and seal all such bottles when received by the defendant from time to time, and that as incidentals to the stamping and sealing and inspection of the said bottles they would be subjected to great risk of breakage, the time of the defendant and his employees would be consumed to a great extent, and the enforcement and ad-

5 defendant to great and unreasonable inconvenience and increase of cost in time and labor; that no complaint has ever been made, to the defendant's knowledge, by any purchaser of milk or cream in the District of Columbia of the working of the said system so as aforesaid now in practice; and that the said bottles are used by the defendant only for convenience in the distribution by

him of milk and cream as aforesaid, and, in no instance, are measured as to their capacity before being filled, or are used at all as measures indicating capacity, except in the sense and to the extent that the aim in their manufacture is to make them, as nearly as possible, of a size to contain the desired quantity of milk or cream, as a quart, pint, or half pint.

And thereupon the order of the Commissioners of the District of Columbia of July 29, 1901, was read to the jury as follows:

“Ordered: That the schedule of fees for inspecting and sealing glass bottles or jars for the distribution or delivery of milk or cream to consumers, adopted June 17, 1901, and suspended July 1, and July 10, 1901, is hereby amended to read as follows, to take effect on and after the first of August, 1901:

That the glass bottles or jars used for the distribution or delivery of milk or cream to consumers, that hold, when filled to a level with the bottom of the cap or stopple, not less than seven ounces and six drams and not over eight ounces and two drams for one-half pint measures; not less than fifteen ounces and five drams and not over sixteen ounces and four drams for one pint; not less than thirty-one ounces and four drams and not over thirty-two ounces and four drams for one quart; not less than forty-seven ounces and three drams and not over forty-eight ounces and five drams for three pints; not less than sixty-three ounces and two drams and not over sixty-four ounces and six drams for one-half gallon, shall be sealed as measures and that all dealers in milk who use glass bottles or jars for the distribution or delivery of milk or cream to consumers shall be charged a fee of fifty cents per hundred bottles for such inspection and sealing.”

6 The foregoing was all the testimony given at the trial.

Thereupon the defendant, by his counsel, prayed the court to instruct the jury as follows:

1. That the order of the Commissioners of the District of Columbia, dated July 29, 1901, prescribing a schedule of fees for inspecting glass bottles and jars used for the distribution or delivery of milk or cream to consumers is invalid, and therefore you must acquit the defendant.

2. That the order of the Commissioners in the last prayer mentioned is invalid because, in the light of the testimony, it is an unreasonable exercise by the Commissioners of the District of Columbia of the authority under and by virtue of which it is supposed to have been made.

3. The jury should acquit the defendant for the reason that the testimony shows that the vessels which it is alleged he refused to be permitted to be examined and stamped were not measures within the meaning of the law and the order of the Commissioners mentioned in the two preceding prayers.

4. The jury is instructed that the word “measure” in the law and order or regulation governing the sealing of weights and measures in the District of Columbia is intended to mean and means some receptacle or instrumentality familiar to the commercial world

as importing and used to measure a given quantity, and accordingly the jury must acquit the defendant unless it finds from the evidence that the jars or bottles described in the testimony were intended to be and were such receptacles or instrumentalities.

7 But the court refused to grant each and every of the said prayers and refused to give each and every of the said instructions, to which refusal of the court in each instance the defendant, by his counsel, then and there excepted, and the court in each instance noted such exception on its minutes.

And thereupon the court of its own motion instructed the jury as follows:

First. That the order of the Commissioners of the District of Columbia of July 29, 1901, aforesaid is good and valid in law, as the act of Congress of the United States under which the same professes to have been made is a valid exercise by the said Congress of its powers under the Constitution of the United States, and that the said order itself is within the authority of the Commissioners of the District of Columbia under the said law and a valid and reasonable exercise of such authority.

Second. That if the jury should find from the evidence that on the occasion mentioned in the information the assistant sealer of weights and measures demanded of the defendant the presentation to him of the glass vessels or bottles of him, the defendant, for the inspection, sealing and stamping by him, the said assistant sealer of weights and measures, and that the defendant declined so to present the same, the jury should find the defendant guilty; and

Third. That the bottles described in the testimony were, within the meaning and contemplation of the act of Congress aforesaid, measures and used as measures within the meaning of the word "measures" as found in the said act of Congress aforesaid.

To each and every of which instructions and each and every feature and detail thereof the defendant, by his counsel, then and there excepted and the court in each instance noted such exception on its minutes.

8 Each and every of the exceptions in this bill of exceptions set forth was noted by the court on its minutes and in each and every instance of the taking of such exceptions, and before the jury retired to consider its verdict, the defendant, by his counsel, gave notice in open court of his intention, in case of the conviction of the defendant, to pray and take an appeal to the Court of Appeals of the District of Columbia, in accordance with the provisions of the statute in such case made and provided.

And the defendant thereupon, and before the jury retired to consider its verdict, prayed the court to sign and seal this his bill of exceptions, to have the same force and effect as though each of such exceptions were set forth in a separate bill of exceptions, which prayer of the defendant was granted, and the court accordingly signs and seals this bill of exceptions, to have the force and effect aforesaid, now for then, this 6th day of November A. D. 1902.

(Signed)

CHARLES S. BUNDY, [SEAL.]

Act'y Judge Police Court of District of Columbia.

In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 217397 wherein The District of Columbia is plaintiff and Corbin Thompson defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 22d day November, A. D. 1902.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

Transcript of Record.

No. 217,397.

In the Police Court of the District of Columbia, February Term,
 1902.

DISTRICT OF COLUMBIA	}	Information for Violation of Weights and Measures Law.
vs.		
CORBIN THOMPSON.	}	

Friday, February 14, 1902.—Continued to November 4, 1902. November 4, 1902: Defendant arraigned; plea: Not guilty. Jury trial demanded. Verdict: Guilty. Judgment: Guilty. Sentence: To pay a fine of five dollars, and, in default, to be committed to the workhouse for the term of fifteen days.

Exceptions taken to the rulings of the court on matters of law and notice given by the defendant in open court at the time of taking the exceptions of his intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error the defendant will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. John W. Gregg, surety.

November 6, 1902.—Bill of exceptions filed, settled and signed.

11 November 11, 1902.—Writ of error received from the Court of Appeals of the District of Columbia.

NOVEMBER 22, 1902.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, D. C.

12 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Charles S. Bundy, judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court before you, between The District of Columbia, plaintiff and Corbin Thompson, defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 11th day of November, in the year of our
Lord one thousand nine hundred and two.

ROBERT WILLETT,

Clerk of the Court of Appeals of the District of Columbia.

Allowed by

R. H. ALVEY,

*Chief Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1260.
Corbin Thompson, plaintiff in error, vs. The District of Columbia.
Court of Appeals, District of Columbia. Filed Nov. 22, 1902.
Robert Willett, clerk.